

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAYMOND A. CUZICK,

Plaintiff,

v.

Carolyn W. Colvin, Acting Commissioner
of the Social Security Administration.

Defendant.

CASE NO. 13-cv-05469 RBL-JRC

ORDER RE: ADDITIONAL
BRIEFING

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits if the ALJ's findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Regarding the question of whether or not substantial evidence supports the findings by the ALJ, the Court should “review the administrative record as a whole, weighing both the evidence that supports and that which detracts from the ALJ’s conclusion.” *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (per curiam) (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

1 In addition, the Court ““must independently determine whether the
 2 Commissioner’s decision is (1) free of legal error and (2) is supported by substantial
 3 evidence.”” *See Bruce v. Astrue*, 557 F.3d 1113, 1115 (9th Cir. 2006) (*citing Moore v.*
 4 *Comm’r of the Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)); *Smolen v. Chater*,
 5 80 F.3d 1273, 1279 (9th Cir. 1996).

6 After considering and reviewing the record in accordance with this independent
 7 duty, the Court has identified an issue that is not addressed specifically in either
 8 plaintiff’s or defendant’s briefing. Nevertheless, plaintiff has generally raised the issue
 9 by alleging that defendant improperly evaluated the medical evidence (*see* Dkt. No. 12, p.
 10 1). Therefore, the Court directs the parties to file supplemental briefs, not to exceed six-
 11 pages, addressing, more specifically, the following issues:
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- 13 (1) Whether or not the ALJ committed legal error when failing to address the
 14 opinion of reviewing medical expert Kenneth Asher, PhD, that plaintiff
 15 would require more than the usual number of breaks to “perform simple,
 16 routine tasks for an eight-hour day, 40-hour work week” (Tr. 96).
- 17 (2) Whether or not the ALJ committed legal error when failing to include Dr.
 18 Asher’s opinion regarding plaintiff’s need for additional breaks when
 19 assessing plaintiff’s RFC, and whether or not this error was consequential
 20 to the ultimate nondisability determination.

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 22 Plaintiff shall file his supplemental brief on or before July 10, 2014.

23 Defendant shall file her supplemental brief on or before July 24, 2014.
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1 Plaintiff shall have until July 31, 2014, to file any reply (not to exceed 3 pages).

2 DATED this 25th day of June, 2014.

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8 J. Richard Creatura
9 United States Magistrate Judge
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